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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

January 5, 2007

Reply To:  
Attn Of: ORC-158

NOTICE OF POTENTIAL LIABILITY FOR REMOVAL  
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY

**VIA FEDERAL EXPRESS**

Terry Cundy  
c/o Potlatch Corporation  
P.O. Box 1388  
Lewiston, Idaho 83501

Re: Avery Landing Site  
Shoshone County, Idaho.

Dear Mr. Cundy:

This letter serves to notify the Potlatch Corporation ("Potlatch") of potential liability with respect to the above-referenced site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and under Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321, as amended by the Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2701 et seq. This letter also notifies Potlatch of forthcoming investigative and removal activities at the Site which Potlatch may choose to perform on consent or may be required to perform through further action of the U.S. Environmental Protection Agency (EPA).

NOTICE OF POTENTIAL LIABILITY

The EPA has documented the release or threatened release of hazardous substances, as defined by CERCLA Section 101(14), at the Avery Landing Site ("the Site"). Further, EPA has documented the discharge of oil into navigable waters of the United States in such quantities as may be harmful. Consistent with CERCLA, OPA, and implementing regulations in the National Contingency Plan, 40 CFR Part 300 et. seq., EPA has spent or



may spend public funds to investigate and control such discharges, releases or threatened releases at the Site.

Under OPA and CERCLA, potentially liable (or "responsible") parties ("PRPs") may be obligated to implement response actions deemed necessary by EPA to protect public health, welfare, or the environment, and may be liable for all costs incurred by the government in responding to any discharge or release or threatened release of oil and hazardous substances. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities.

Persons responsible for discharges or releases are encouraged to perform removal actions through consent agreements. If a PRP refuses to conduct required removal actions on consent, EPA may issue an administrative order to the facility pursuant to CWA Section 311(c) and/or (e), 33 U.S.C. § 1321(c) or (e), or pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a). The failure of a responsible party to comply with an administrative order under CERCLA or OPA may result in a fine of up to \$32,500 per day. In addition or in the alternative to an administrative order under either OPA or CERCLA, EPA may take the necessary response actions to remove or mitigate the discharge or release and pursue further actions to recover its costs from responsible parties. Should these costs be incurred as a result of a responsible party's failure to comply with an administrative order under OPA or CERCLA, EPA may seek penalties of up to three times the cost incurred by the Hazardous Substance Superfund or Oil Spill Liability Trust Fund.

EPA has evaluated information in connection with the Avery Landing Site. Based on this information, EPA believes that as the current owner of the Site, Potlatch is a responsible party for the Site. Responsible parties under CERCLA include the "owner and operator of a vessel or a facility." 42 U.S.C. § 9607(a)(1). In addition, EPA has initially determined that Potlatch is responsible for removal costs under OPA, as it is the "owner or operator of an onshore facility" from which oil was discharged in harmful quantities into a navigable water of the United States. 33 U.S.C. § 1321(f).

#### SITE INVESTIGATION AND RESPONSE ACTIVITIES

Activities at the Avery Landing Site led to the release of benzene, free product petroleum, as well as several metals, including arsenic and lead, all of which have been detected to be

present in groundwater sampled at the Site at concentrations greater than Maximum Contaminant Levels(MCL). Activities at the Site have also led to discharges of oil and hazardous substances into the adjacent St. Joe River, a navigable water of the United States and designated by the State of Idaho as a special resource water not to be degraded.

In September 2005, Light Non-Aqueous Phase Liquids (LNAPL) were observed to be seeping from the Avery Landing Site into the St. Joe River, causing a visible sheen on the river. An oily sheen was also observed and documented in the same location in October 2006. Remediation at the Site has thus far only addressed free product petroleum hydrocarbons and has been restricted to limited site delineation without regard for dissolved phase hydrocarbons, benzene, arsenic, lead, or other potential contaminants, nor has it addressed the geographic distribution of these contaminants. Additional evaluation at the Site will be necessary to ascertain the fate and transport of other potential constituents and petroleum hydrocarbon phases, as well as the potential impacts to the St. Joe River and groundwater. With additional information, EPA will determine the appropriate response action at the Site necessary to address the contamination and ensure full protection of human health and the environment.

#### SPECIAL NOTICE AND NEGOTIATION MORATORIUM

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures. In order to expedite cleanup activities, it is EPA's policy not to use the special notice procedures for removals unless there is a six-month planning lead time after the decision to respond. Since the planning lead time prior to the initiation of this response action is less than six months, special notice procedures will not be used.

#### ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA will establish an administrative record which contains documents that will form the basis of EPA's decision on the selection of a response action for the Site. The administrative record for any removal action selected for this Site will be available to the public for inspection and comment consistent with applicable regulations. At present, EPA has not selected a field location for the administrative record. In the meantime, the administrative record will be established and made available at EPA Region 10's office in Seattle, Washington.

#### INFORMATION TO ASSIST RESPONSIBLE PARTIES

EPA has obtained information which indicates that some releases at the Site may have occurred while the Site was the property of the Chicago, Milwaukee, St. Paul, and Pacific Railroad ("Milwaukee Road"). The Milwaukee Road operated a rail yard at the Avery Landing Site from 1909 to 1977, before it sold the property to Potlatch in 1980. During that time, the Milwaukee Road's activities at the Site included refueling and maintenance of railroad equipment, and also likely included the storage of electrical transformers used on the Milwaukee Road's electric line, which terminated at Avery Landing. The Milwaukee Road no longer exists. EPA has obtained information which indicates that CMC Heartland Partners ("CMC") is the corporate successor of the Milwaukee Road. Based on this information, EPA believes that CMC, like Potlatch, is also a PRP under CERCLA for the Site.

PRPs under CERCLA include "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of. . . ." 42 U.S.C. § 9607(a)(2). "Person" under CERCLA is defined to include a corporation. 42 U.S.C. § 9601(21). CERCLA liability also extends to corporate successors of persons liable under CERCLA. *Louisiana-Pacific Corp. v. Asarco, Inc.*, 909 F.2d 1260 (9th Cir. 1990), overruled on other grounds by *Atchison, Topeka & Santa Fe Ry. Co. v. Brown & Bryant*, 132 F.3d 1295 (9th Cir. 1997); *North Shore Gas Co. v. Salomon Inc.*, 152 F.3d 642 (7th Cir. 1998); *B.F. Goodrich v. Betkoski*, 99 F.3d 505 (2d Cir. 1996).

The contact information for CMC is:

CMC Heartland Partners  
330 N. Jefferson Suite 305  
Chicago, IL 60661  
(312) 575-0400

EPA encourages good faith negotiations with and among PRPs. If additional PRPs for this Site are identified in the future, Potlatch will be notified promptly and provided with contact information for such other PRPs.

PRP RESPONSE AND EPA CONTACT

Potlatch is encouraged to contact EPA within 30 days of receipt of this letter to indicate its willingness to carry out a comprehensive investigation of contamination at the Avery Landing Site, consistent with the attached outline. If Potlatch agrees to conduct this investigation itself, the work will be conducted pursuant to an administrative order on consent entered by Potlatch and EPA. If EPA does not receive a timely response from Potlatch, EPA may exercise its authority under OPA and CERCLA to issue a unilateral administrative order compelling Potlatch to carry out the required site investigation. EPA may, in the alternative, carry out such necessary investigation itself and seek to recover any costs that EPA incurs at the Site, pursuant to authority under OPA and CERCLA.

Potlatch's response to this notice letter should be sent to:

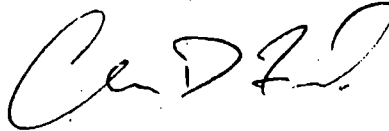
Clifford J. Villa, Esq.  
U.S. EPA Region 10  
1200 6<sup>th</sup> Avenue, ORC-158  
Seattle, WA 98101

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If Potlatch has any technical questions pertaining to this Site, please direct them to EPA's On-Scene Coordinator, Earl Liverman, at (208) 664-4858. Concerning any legal matter

including liability under CERCLA, please contact EPA's legal  
counsel, Clifford J. Villa, at (206) 553-1185.

Sincerely,

A handwritten signature in dark ink, appearing to read "Chris Field", written in a cursive style.

Chris Field, Unit Manager  
Office of Environmental Cleanup

Enclosure

## **PROJECT DOCUMENTS REQUIRED FOR CONDUCT OF AN INTEGRATED REMOVAL SITE EVALUATION**

The following site-specific plans must be prepared and submitted for EPA's approval for conduct of an integrated removal site evaluation:

- Work Plan
- Field Sampling and Quality Assurance Plan
- Health and Safety Plan

### **WORK PLAN**

The work plan must provide for an investigation of all potential releases or discharges of oil, petroleum products, and hazardous substances at or from the site. The work plan must also address general considerations and site-specific conditions, including:

- site description and regulatory and operational history;
- project objectives (e.g., to identify oil, petroleum products, or hazardous substances and document whether a release has occurred to soil, sediment, groundwater, or surface water); and
- project management activities, including a schedule identifying task and deliverable completion dates and personnel.

### **FIELD SAMPLING AND QUALITY ASSURANCE PROJECT PLAN**

The contents of a typical field sampling and quality assurance project plan includes:

- site background and sampling objectives;
- sample location and frequency (i.e., spatial, temporal, and media variability);
- sample designation, equipment, and procedures;
- sample handling and analysis; and
- field QA/QC considerations.

### **HEALTH AND SAFETY PLAN**

The health and safety plan (HASP) must address the requirements of 29 *Code of Federal Regulations* 1910.120 for hazardous waste operations (i.e., Hazardous Waste Operations and Emergency Response [HAZWOPER] standards). In addition, the HASP also may include other Occupational Safety and Health Administration standards for traditional construction activities.